



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

1999 BRYAN ST., SUITE 1620
DALLAS, TX 75201-6810

REGION VI
ARKANSAS
LOUISIANA
MISSISSIPPI
TEXAS

Re: OCR Docket #06141623

Mr. Isaac G. Joseph, Superintendent
Jefferson Parish Public School System
501 Manhattan Blvd.
Harvey, Louisiana 70058-4495

Dear Mr. Joseph:

This letter is to inform you that the U.S. Department of Education (Department), Office for Civil Rights (OCR), Dallas Office has completed its investigation of the above-referenced complaint against the Jefferson Parish Public School System (JPPSS), Harvey, Louisiana, which OCR received on June 2, 2014. The complainant alleged that the JPPSS discriminated against her client (the Student) on the basis of national origin (XXX) when it failed to provide him with “ESL accommodations” after his parents removed him from his English as a Second Language (ESL) class and placed him in the regular classroom environment during the XXX semester.

OCR investigated this complaint under the authority of Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. §§ 2000d *et seq.*, and its implementing regulations at 34 C.F.R. Part 100, which prohibit discrimination on the bases of race, color, and national origin. JPPSS is a recipient of financial assistance from the Department. Therefore, OCR has jurisdictional authority to investigate this complaint under Title IV.

Based on the complainant’s allegation, OCR investigated the legal issue of whether JPPSS failed to provide equal educational opportunities to the Student, a national origin language-minority student, by causing his parents to opt out of the language program involuntarily and unknowingly, and by not taking affirmative steps to provide the student access to its educational program, in violation of Title VI, at 34 C.F.R. § 100.3.

A finding that a recipient has violated one of the laws that OCR enforces must be supported by a preponderance of the evidence (*i.e.*, sufficient evidence to prove that something is more likely to have occurred than not). When there is a significant conflict in the evidence and OCR is unable to resolve that conflict, for example, due to the lack of corroborating witness statements or additional evidence, OCR generally must conclude that there is insufficient evidence to establish a violation of the law.

During the investigation, OCR interviewed the complainant and JPPSS staff members, and reviewed information provided by the complainant and JPPSS. As a result of OCR's investigation and analysis, OCR has determined that there is insufficient evidence to support the complainant's allegation. Provided below is an explanation of how this determination was reached. However, as explained below, OCR found evidence of noncompliance during the course of its investigation.

Legal Overview

On May 25, 1970, pursuant to its authority under Title VI, the Department issued a memorandum entitled "Identification of Discrimination and Denial of Services on the Basis of National Origin," 35 Fed. Reg. 11,595 (May 1970 memorandum). The memorandum clarifies OCR policy under Title VI on issues concerning the responsibility of school districts to provide equal educational opportunity to English language learner (ELL) national-origin minority students. It states that school districts must take affirmative steps to address the language needs of ELL students. In *Lau v. Nichols*, 414 U.S. 563 (1974), the Supreme Court determined that where the inability to speak and understand the English language excludes national origin minority students from effective participation in educational programs, districts must take affirmative steps to ensure that such ELL students can meaningfully participate in the district's educational programs and services in order to comply with Title VI. School districts must also provide language services to students whose parents have declined or opted out of the ELL program by monitoring students' academic progress and providing other language support services for such students.

Findings of Fact and Analysis

OCR determined that the Student was an XXXX student at Roosevelt Middle School (RMS) during the XXXX semester. As an ELL student, the Student was enrolled in English as a second language (ESL) XXX and ESL XXXX at the beginning of the school year. The complainant alleged that RMS discriminated against the Student by not providing him with "ESL accommodations" after his parents removed him from his English as a Second Language (ESL) class and placed him in the regular classroom environment.

The ESL program at RMS separates ESL students into one of three ability groups: beginner, intermediate, and advanced. According to JPPSS, ESL students receive ESL accommodations even when they are not in their ESL courses, as do students who are opted out of the language program. The ESL accommodations for each student are documented in a form called the "Accommodation and Correlations for ELL (ACE)," which is generally completed by the ESL teacher; a copy of this form is provided to each ESL student's teacher(s) and parents.

The Student was classified as XXXXX ESL student, and, as such, was placed in ESL XXXX and XXXX classes. OCR reviewed the Student's ACE form and the same shows

that the Student was to receive the following accommodations/modifications: bilingual dictionary, cooperative learning/peer assistance, increased hands-on activities, modified/shortened tests, peer assistance for note taking, photocopied notes/study guide, preferential seating, reduced paper/pencil tasks, spelling deduction discounted, use of graphic organizers, and bilingual professional support. The ACE form directs that this list be communicated to all teachers for classroom implementation.

The complainant informed OCR that the Student attended a regular classroom XXXX class from XXXXXX to XXXXXX, because his parents removed him from the ESL XXXXXX class following alleged national origin discrimination by the XXXXXX, and requested that he be provided with ESL accommodations in a regular XXXXXX class.¹ According to the complainant, the Student did not receive ESL accommodations while he was attending the regular XXXXXX class.² However, OCR interviewed the regular classroom XXXXXX Teacher, who informed OCR that she provided the following ESL accommodations to the Student while he was in her class: preferential seating, reading tests aloud, modified tests, computer learning, use of bilingual dictionary and hands-on activities. She further informed OCR that she did not receive or hear about any complaints from the Student or his parents about his not receiving ESL services.

According to the complainant, in March 2014, the Student's regular XXXXXX Teacher recommended to the Student's parents that the Student be returned to the ESL XXXXXXXX class, to which the parents agreed. However, during her interview with OCR, the regular XXXXXX Teacher denied making this recommendation and stated that the reason why the Student left her class was related to a XXXX XXXX. Regardless, in May 2014, the parents again removed the Student from his ESL XXXXXX class because, the complainant asserts, the ESL XXXX Teacher again mistreated the Student as she previously did in the XXXXXXXX.

Based upon a review of the evidence, OCR determined there is conflicting information as to whether JPPSS provided accommodations to the Student in his regular XXXXXX class after his parents removed him from the ESL XXXXXX class. OCR was unable to resolve the conflict between the information provided by the complainant from that provided by JPPSS. Therefore, OCR has determined that there is insufficient evidence to establish that JPPSS failed to provide the Student access to its educational programs at RMS in violation of Title VI.

However, during the course of OCR's investigation, the complainant informed OCR that, when the Student started his XXX grade year at Bonnabel High School (BHS) in XXXXXX, although the first day of school for the XXXXXX school year was XXXXXX, the JPPSS did not provide the Student any ESL services until XXXXXXXX. According to

¹ This alleged national origin discrimination is currently being investigated as part of OCR Docket # 06141461.

² The complainant further informed OCR that the Student's parents did not remove the Student from his ESL XXXX class. Accordingly, the complainant's allegation pertains solely to ESL XXXX.

the BHS XXXXX and the Student's XXXX XXXXX Teacher at BHS, the Student was placed in the ESL program on XXXXX, following an Individualized Education Program (IEP) meeting for the Student at which the parents informed the BHS XXXX that the Student was not receiving any of his ESL services. The BHS XXXX attributed the delay to the fact that the records from the Student's prior year at RMS did not show that the Student was in the ESL program, since his parents had removed him from the ESL XXXXX class. Therefore, based on a preponderance of the evidence, OCR has determined that there is sufficient evidence to support a conclusion of noncompliance with Title VI with regard to provision of ESL services to the Student at BHS at the beginning of the XXXX-XXXX school year.

Conclusion

Consistent with Section 303(b) of OCR's Case Processing Manual, JPPSS submitted the enclosed Resolution Agreement (Agreement), dated March 14, 2017. The Agreement includes action steps that, when implemented, will remedy the discriminatory conduct revealed during OCR's investigation. Under the Agreement, JPPSS will:

- Offer the Student the opportunity to return to BHS for the remainder of the 2016-2017 school year and will determine the appropriate compensatory and/or remedial alternative language program (ALP) services as a result of any failure to provide said services during the Student's enrollment in the School from XXXXX, through XXXXXXXXX.
- Ensure that all instructional and administrative staff at the School receives training on JPPSS ALP policies and procedures and on JPPSS's overall obligation to provide equal educational opportunities to limited ELL students.

OCR has determined that the Agreement, when fully implemented, will satisfactorily resolve the compliance concerns identified during the investigation. Accordingly, as of the date of this letter, OCR will cease all investigative actions regarding this issue; however, OCR will actively monitor JPPSS's efforts to implement the Agreement. Please be advised that if JPPSS fails to adhere to the actions outlined in the Agreement, OCR will immediately resume its compliance efforts related to this issue.

This concludes OCR's investigation of the complaint and should not be interpreted to address the JPPSS' compliance with any other regulatory provision or to address any issues other than those addressed in this letter. This letter sets forth OCR's determination in individual OCR cases. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public. Please note, that the complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

Further, please be advised that the JPPSS may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, an individual may file another complaint alleging such treatment.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a request, we will seek to protect, to the extent provided by law, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

If you have any questions you may contact Jose Ortiz, Civil Rights Attorney, at 214-661-9643 or by email at jose.ortiz@ed.gov, or Ms. Terri Gonzales, Supervisory General Attorney/Team Leader, at 214-661-9687 or by email at Terri.Gonzales@ed.gov.

Sincerely,

/S/

Taylor D. August
Director
Office for Civil Rights
Dallas Office

Cc: XXXXXXXXX, Chief of Legal Services